

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL LAURENCE HOKE,

Plaintiff,

v.

M. NUNEZ, *et al.*,

Defendants.

Case No. 2:25-cv-0275-JDP (P)

ORDER

Plaintiff, a state prisoner proceeding pro se, brings this § 1983 action against M. Nunez, a counselor at plaintiff's facility, and C. Cser, a correctional officer, alleging that defendants misclassified plaintiff upon his arrival. ECF No. 1. The allegations fail to state a claim. Plaintiff may, if he chooses, file an amended complaint that addresses the deficiencies noted herein. I will grant plaintiff's application to proceed *in forma pauperis*. ECF No. 2.

**Screening and Pleading Requirements**

A federal court must screen the complaint of any claimant seeking permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.*

1 A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
 2 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its  
 3 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
 4 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.  
 5 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere  
 6 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not  
 7 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,  
 8 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that  
 9 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264  
 10 n.2 (9th Cir. 2006) (en banc) (citations omitted).

11 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404  
 12 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it  
 13 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
 14 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).  
 15 However, “‘a liberal interpretation of a civil rights complaint may not supply essential elements  
 16 of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,  
 17 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

### 18 Analysis

19 Plaintiff alleges that Nunez, Cser, and others on plaintiff’s classification team violated his  
 20 due process rights when they misclassified him upon his arrival at California Medical Facility.  
 21 ECF No. 1 at 3. He asserts that Nunez used incorrect information to classify him as an “R’  
 22 suffix sex offender.” *Id.* He also alleges that Nunez gave him incorrect information to persuade  
 23 him against filing a grievance. *Id.* He alleges that Nunez told him that it would be pointless to  
 24 file a grievance because plaintiff’s classification hinged on records provided to Nunez and not  
 25 Nunez’s own opinions. *Id.* He acknowledges that he pled guilty to crimes against his ex-wife,  
 26 but he asserts that he should not be classified as a sex offender. *Id.* at 4. He appears to bring this  
 27 claim under the Fourteenth Amendment to the federal constitution, and defamation of character  
 28 and due process under state law. *Id.* at 3.

1 Plaintiff fails to state a claim. First, plaintiff fails to adequately allege a Fourteenth  
2 Amendment claim based on his misclassification. To bring a Fourteenth Amendment due process  
3 claim, a plaintiff must allege that (1) he had a life, liberty, or property interest that the state  
4 deprived him of and (2) the procedures related on that deprivation were constitutionally  
5 insufficient. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). Plaintiff neither alleges  
6 that any constitutionally protected interest was impacted by his misclassification nor does he  
7 explain how the process of his misclassification was constitutionally insufficient. *See* ECF No. 1  
8 at 3. As such, plaintiff fails to allege a Fourteenth Amendment due process claim. *See Barno v.*  
9 *Ryan*, No. 07-CV-1373 JM (WMC), 2008 WL 4951593, at \*2-3 (S.D. Cal. Nov. 17, 2008)  
10 (dismissing plaintiff's due process claim with leave to amend because he failed to allege what  
11 constitutionally protected interest was impacted by his initial misclassification as a sex offender).  
12 Necessarily, plaintiff also fails to adequately allege a due process violation under California state  
13 law. *See Walls v. Cent. Contra Costa Transit Auth.*, 653 F.3d 963, 967-68 (9th Cir. 2011)  
14 (analyzing a federal due process and California due process claim together because they involve  
15 the same elements—whether the plaintiff had a protected interest and whether plaintiff received  
16 the process he was due).

17 Plaintiff also fails to adequately allege a state law defamation claim. A California  
18 defamation claim has the following elements: (1) publication (2) of false information (3) that is  
19 defamatory and (4) unprivileged, which (5) has the natural tendency to injure or cause special  
20 damage. *Bowles v. Constellation Brands, Inc.*, 444 F. Supp. 3d 1161, 1172 (E.D. Cal. 2020)  
21 (citing *Redfearn v. Trader Joe's Co.*, 230 Cal. Rptr. 3d 98, 112 (Cal. Ct. App. 2018), *disapproved*  
22 *of on other grounds by Ixchel Pharma, LLC v. Biogen, Inc.*, 266 Cal. Rptr. 3d 665 (Cal. 2020)).  
23 Publication is a necessary element of a defamation claim. *Id.* Here, plaintiff's allegation is  
24 simply that he was misclassified as a sex offender based on incorrect information. *See* ECF No. 1  
25 at 3. He neither alleges that this misclassification was published anywhere, nor that anyone other  
26 than those who misclassified him knew of this allegedly false information. As such, plaintiff's  
27 defamation claim fails.  
28

1 Finally, to the extent plaintiff can be deemed to be bringing an Eighth Amendment claim  
2 based on his misclassification, misclassification alone is not condemned by the Eighth  
3 Amendment. *See Myron v. Terhune*, 476 F.3d 716, 719 (9th Cir. 2007) (“Because the mere act of  
4 classification ‘does not amount to an infliction of pain,’ it ‘is not condemned by the Eighth  
5 Amendment.’” (citation omitted)); *see also Clark v. Moreno*, No. 5:21-cv-00790-MCS-PD, 2023  
6 WL 6520540, at \*5 (C.D. Cal. Aug. 29, 2023) (“Neither misclassification of an inmate nor  
7 confinement of an inmate in administrative segregation due to misclassification satisfies this  
8 [Eighth Amendment “sufficiently serious”] standard.”).

9 Accordingly, plaintiff’s complaint is dismissed for failure to state a claim. I will allow  
10 plaintiff a chance to amend his complaint before recommending that this action be dismissed.  
11 Plaintiff should also take care to add specific factual allegations against each defendant. If  
12 plaintiff decides to file an amended complaint, the amended complaint will supersede the current  
13 one. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means  
14 that the amended complaint will need to be complete on its face without reference to the prior  
15 pleading. *See E.D. Cal. Local Rule 220*. Once an amended complaint is filed, the current one no  
16 longer serves any function. Therefore, in an amended complaint, as in the original, plaintiff will  
17 need to assert each claim and allege each defendant’s involvement in sufficient detail. The  
18 amended complaint should be titled “First Amended Complaint” and refer to the appropriate case  
19 number. If plaintiff does not file an amended complaint, I will recommend that this action be  
20 dismissed.

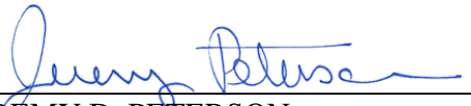
21 Accordingly, it is hereby ORDERED that:

- 22 1. Plaintiff’s request for leave to proceed *in forma pauperis*, ECF No. 2, is GRANTED.
- 23 2. Plaintiff’s complaint, ECF No. 1, is DISMISSED with leave to amend.
- 24 3. Within thirty days from service of this order, plaintiff shall file either (1) an amended  
25 complaint or (2) notice of voluntary dismissal of this action without prejudice.
- 26 4. Failure to timely file either an amended complaint or notice of voluntary dismissal may  
27 result in the imposition of sanctions, including a recommendation that this action be dismissed  
28 with prejudice pursuant to Federal Rule of Civil Procedure 41(b).

1           5. The Clerk of Court shall send plaintiff a complaint form with this order.

2  
3 IT IS SO ORDERED.

4 Dated: April 15, 2025

  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE